

UNITED STATES INTERNATIONAL TRADE COMMISSION

MAGNESIUM FROM CANADA

Investigations Nos. 701-TA-309-A-B and 731-TA-528 (Review)

DETERMINATIONS AND VIEWS OF THE COMMISSION

(USITC Publication No. 3324, July 2000)

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MAGNESIUM FROM CANADA

DETERMINATIONS

On the basis of the record¹ developed in the subject five-year reviews, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act), that revocation of the countervailing duty orders² and the antidumping duty order on magnesium from Canada would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

BACKGROUND

The Commission instituted these reviews on August 2, 1999, (64 F.R. 41961) and determined on November 4, 1999, that it would conduct full reviews (64 F.R. 62690, November 17, 1999). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* on February 10, 2000 (65 F.R. 6628). The hearing was held in Washington, DC, on May 31, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

¹ The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

² Commissioner Thelma J. Askey dissenting.

VIEWS OF THE COMMISSION

Based on the record in these five-year reviews, we determine under section 751(c) of the Tariff Act of 1930, as amended (“the Act”), that revocation of the countervailing duty orders covering pure magnesium and alloy magnesium from Canada would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.³ We also determine that revocation of the antidumping duty order on pure magnesium from Canada would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

I. BACKGROUND

In August 1992, the Commission determined that an industry in the United States producing primary magnesium was being materially injured by reason of imports of dumped and subsidized magnesium from Canada.⁴ On August 31, 1992, the Department of Commerce (“Commerce”) issued countervailing duty orders on imports of pure magnesium and alloy magnesium from Canada and an antidumping duty order on imports of pure magnesium from Canada.⁵ The respondents subsequently challenged the Commission's final determinations before a United States-Canada Binational Panel.⁶ In August 1993, the Panel remanded the Commission's determinations.⁷ The Panel instructed the Commission to provide, on remand--

. . . a detailed explanation as to (1) whether the U.S. industry producing pure magnesium is materially injured or threatened with material injury by reason of dumped or subsidized imports of pure magnesium from Canada and (2) whether the U.S. industry producing alloy magnesium is materially injured or threatened with material injury by reason of subsidized imports of alloy magnesium from Canada.⁸

Pursuant to the Panel's instructions, the Commission issued remand determinations based on the existence of two separate industries—one producing pure magnesium and the second producing alloy magnesium.⁹ The Commission determined that the domestic industry producing pure magnesium and the domestic industry producing alloy magnesium were materially injured by

³ Commissioner Thelma J. Askey dissenting. *See* Dissenting Views of Commissioner Thelma J. Askey. Except as otherwise noted, Commissioner Askey joins in sections I, II, III and IV of these Views.

⁴ Magnesium from Canada, Invs. Nos. 701-TA-309 and 731-TA-528 (Final), USITC Pub. 2550 (August 1992) (“Original Final Determination”).

⁵ 64 Fed. Reg. 39390 (antidumping duty order) and 39392 (countervailing duty orders) (Aug. 31, 1992).

⁶ *See* Article 1904 of the United States-Canada Free-Trade Agreement (FTA).

⁷ In the Matter of Magnesium from Canada, Case Nos. USA-92-1904-05 and USA 92-1904-06 (Aug. 27, 1993) (Remand).

⁸ Panel Decision at 29.

⁹ Magnesium from Canada, Invs. Nos. 701-TA-309 and 731-TA-528 (Final), USITC Pub. 2696 (Oct., 1993) (“Original Remand Determination”).

reason of subsidized imports of pure magnesium and alloy magnesium from Canada. The Commission also determined that the domestic industry producing pure magnesium was materially injured by reason of dumped imports of pure magnesium from Canada. On January 24, 1994, the Panel affirmed the Commission's remand determination.¹⁰

On August 2, 1999, the Commission instituted these reviews pursuant to section 751(c) of the Act, to determine whether revocation of the antidumping and countervailing duty orders on magnesium from Canada would likely lead to continuation or recurrence of material injury.¹¹

In five-year reviews, the Commission initially determines whether to conduct a full review (which would generally include a public hearing, the issuance of questionnaires, and other procedures) or an expedited review, as follows. First, the Commission determines whether individual responses to the notice of institution are adequate. Second, based on those responses deemed individually adequate, the Commission determines whether the collective responses submitted by two groups of interested parties -- domestic interested parties (producers, unions, trade associations, or worker groups) and respondent interested parties (importers, exporters, foreign producers, trade associations, or subject country governments) -- demonstrate a sufficient willingness among each group to participate and provide information requested in a full review.¹² If the Commission finds the responses from both groups of interested parties to be adequate, or if other circumstances warrant, it will determine to conduct a full review.

In these reviews, the Commission received a response to the notice of institution from Magnesium Corporation of America ("Magcorp"), a domestic producer of both pure and alloy magnesium. The Commission also received responses from three interested respondent parties: Norsk Hydro Canada, Inc. ("NHCI"), a Canadian producer and exporter of pure and alloy magnesium; the Government of Canada; and Gouvernement du Quebec ("GOQ").¹³

On November 4, 1999, the Commission determined that both the domestic and respondent interested party group responses to its notice of institution were adequate.¹⁴ Pursuant to 19 U.S.C. § 1675(c)(5), the Commission decided to conduct a full five-year review.

On May 31, 2000, the Commission held a hearing in these reviews. Magcorp filed briefs and appeared at the hearing in support of continuation of the orders. GOQ and NHCI filed briefs and appeared at the hearing in support of revocation of the orders. Noranda, an industrial user of pure magnesium, and Northern Diecast Corporation, an industrial user of alloy magnesium, also filed briefs and appeared at the hearing in support of revocation. General Motors, an industrial user primarily of alloy magnesium, filed a brief supporting revocation, but did not appear at the hearing.^{15 16}

¹⁰ In the Matter of Magnesium from Canada, Case Nos. USA-92-1904-05 and USA 92-1904-06 (Jan. 27, 1994) (Final Decision of the Panel).

¹¹ 64 Fed. Reg. 41961 (Aug. 2 1999).

¹² See 19 C.F.R. § 207.62(a); 63 Fed. Reg. 30599, 30602-05 (June 5, 1998).

¹³ Two industrial users of magnesium, General Motors Corp. ("General Motors") and Noranda Aluminum, Inc. ("Noranda"), also filed submissions in support of revocation of the orders. See 19 C.F.R. 207.62(a).

¹⁴ See Explanation of Commission Determinations on Adequacy in *Magnesium from Canada*. See also 64 Fed. Reg. 62690 (Nov. 17, 1999).

¹⁵ Magnola Metallurgy ("Magnola"), a Canadian producer scheduled to begin production this year, did not
(continued...)

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. Domestic Like Product

In making its determination under section 751(c), the Commission defines “the domestic like product” and the “industry.”¹⁷ The Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle.”¹⁸ In a section 751(c) review, the Commission also must take into account “its prior injury determinations.”¹⁹

In its final full sunset reviews of the countervailing duty orders, Commerce defined the subject merchandise as--

pure and alloy magnesium from Canada. Pure unwrought magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Magnesium alloys contain less than 99.8 percent magnesium by weight with magnesium being the largest metallic element in the alloy by weight, and are sold in various ingot and billet forms and sizes. . . . Secondary and granular magnesium are not included in the scope of these orders.²⁰

In its final full sunset review of the antidumping duty order, Commerce described the subject merchandise as--

pure magnesium from Canada. . . . Pure unwrought magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Granular and secondary magnesium are excluded from the scope of this review.²¹

¹⁵ (...continued)

appear as a party in these reviews. However, Magnola filed post-hearing comments. *See* 19 C.F.R. § 207.67(b). In its comments, Magnola stated that it “would have liked to have participated in the proceedings to revoke the orders, but as we have understood the law in the United States, we were not able to do so.” In fact, Magnola’s counsel (who also represented Magnola’s majority owner Noranda, which, although not an interested party, did appear as a party to these reviews) never attempted to file an entry of appearance on behalf of Magnola. Indeed, Magnola could have applied to appear in these reviews as a party whether or not it qualified as an “interested party.” *See* 19 C.F.R. § 201.11(a) (any person found to have a proper reason for participating in an investigation shall be permitted to appear as a party).

¹⁶ Commissioner Askey does not join the preceding footnote.

¹⁷ 19 U.S.C. § 1677(4)(A).

¹⁸ 19 U.S.C. § 1677(10). *See* NEC Corp. v. Department of Commerce, 36 F. Supp.2d 380, 383 (Ct. Int’l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (Ct. Int’l Trade 1990), *aff’d*, 938 F.2d 1278 (Fed. Cir. 1991). *See also* S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

¹⁹ 19 U.S.C. § 1675a(a)(1)(a).

²⁰ Final Results of Full Sunset Reviews: Pure Magnesium and Alloy Magnesium from Canada, 65 Fed Reg. 41444(July 5, 2000).

²¹ Pure Magnesium from Canada; Final Results of Full Sunset Review, 65 Fed. Reg. 41436 (July 5, 2000).

Magnesium is the eighth most abundant element in the earth's crust and the third most plentiful element dissolved in seawater.²² It is the lightest of all structural metals and is characterized by high vibrational-dampening properties.²³

Pure magnesium has special metallurgical and chemical properties that allow it to alloy well with metals such as aluminum.²⁴ Typically, it is used in the production of aluminum alloys for use in beverage cans and in some automotive parts, in iron and steel desulfurization, as a reducing agent for various nonferrous metals, and in magnesium anodes for the protection of iron and steel in underground pipe and water tanks and various marine applications.²⁵

Alloy magnesium is usually used in end products to improve certain properties, such as strength, ductility, workability, corrosion resistance, density, or castability.²⁶ It is used principally in structural applications, primarily in die, mold and sand castings and in extrusions for the automotive industry.²⁷ It has a high strength-to-weight ratio and is easily machined, making it ideal for a number of structural components.²⁸

The starting point of the Commission's like product analysis in a five-year review is the like product definition in the Commission's original determination.²⁹ In the original investigation, the Commission, on remand, found two separate like products--pure magnesium and alloy magnesium--corresponding respectively to the two classes or kinds of subject imports found by Commerce. No party has argued for a different like product definition in these reviews, and there is no information that indicates a need to revisit the Commission's definition of the like products in the original remand determination. Rather, the record indicates that there have been no significant changes in the characteristics and uses for pure and alloy magnesium since the original investigation. Accordingly, we define two separate like products--pure magnesium and alloy magnesium.

B. Domestic Industries

Section 771(4)(A) of the Act defines the relevant industry as the domestic "producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like

²² Confidential Report, Memorandum INV-X-141 (June 26, 2000) ("CR") at I-13, Public Report ("PR" at I-7).

²³ CR at I-13, PR at I-7.

²⁴ CR at I-14, PR at I-8.

²⁵ CR at I-14, PR at I-8.

²⁶ CR at I-14, PR at I-7.

²⁷ CR at I-14, PR at I-8.

²⁸ CR at I-18, PR at I-10.

²⁹ In the like product analysis for an investigation, the Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) common manufacturing facilities, production processes and production employees; (5) customer and producer perceptions; and, where appropriate, (6) price. *See The Timken Co. v. United States*, 913 F. Supp. 580, 584 (Ct. Int'l Trade 1996). No single factor is dispositive, and the Commission may consider other factors relevant to a particular investigation. The Commission looks for clear dividing lines among possible like products, and disregards minor variations. *See, e.g.* S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979); *Torrington*, 747 F. Supp. at 748-49.

product constitutes a major proportion of the total domestic production of the product.”³⁰ In defining the domestic industry, the Commission’s general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market, provided that adequate production-related activity is conducted in the United States.³¹ In accordance with our domestic like product determination, we determine that there are two domestic industries composed respectively of the domestic producers of pure magnesium and the domestic producers of alloy magnesium. Both industries consist of two producers—Magcorp and Northwest Alloys.³²

III. LEGAL STANDARD IN A FIVE-YEAR REVIEW

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke a countervailing or antidumping duty order unless: (1) it makes a determination that dumping is likely to continue or recur, and (2) the Commission makes a determination that revocation of an order “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”³³ The Statement of Administrative Action (“SAA”) accompanying the Uruguay Round Agreements Act states that “under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo – the revocation [of the order] . . . and the elimination of its restraining effects on volumes and prices of imports.”³⁴ Thus, the likelihood standard is prospective in nature.³⁵ The statute states that “the Commission shall consider that the effects of revocation . . . may not be imminent, but may manifest themselves only over a longer period of time.”³⁶ According to the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case, but normally will exceed the ‘imminent’ time frame applicable in a threat of injury analysis [in antidumping and countervailing duty investigations].”^{37 38}

³⁰ 19 U.S.C. § 1677(4)(A).

³¹ See, e.g., United States Steel Group v. United States, 873 F. Supp. 673, 682-83 (Ct. Int’l Trade 1994), *aff’d*, 96 F.3d 1352 (Fed. Cir. 1996).

³² CR at I-19-20, PR at I-11. Although nearly all of Northwest’s production is of pure magnesium, ***. CR at I-20, III-4, PR at I-11, III-2.

³³ 19 U.S.C. § 1675a(a).

³⁴ SAA, H.R. Rep. 316, 103d Cong., 2d Sess., vol. 1 at 883 (1994). The SAA states that “[t]he likelihood of injury standard applies regardless of the nature of the Commission’s original determination (material injury, threat of material injury, or material retardation of an industry).” SAA at 883.

³⁵ While the SAA states that “a separate determination regarding current material injury is not necessary,” it indicates that “the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued [sic] prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked.” SAA at 884.

³⁶ 19 U.S.C. § 1675a(a)(5).

³⁷ SAA at 887. Among the factors that the Commission should consider in this regard are “the fungibility or differentiation within the product in question, the level of substitutability between the imported and domestic products, the channels of distribution used, the methods of contracting (such as spot sales or long-term contracts),
(continued...)

Although the standard in five-year reviews is not the same as the standard applied in original antidumping or countervailing duty investigations, it contains some of the same fundamental elements. The statute provides that the Commission is to “consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked.”³⁹ It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order under review, and whether the industry is vulnerable to material injury if the order is revoked.⁴⁰

We note that the statute authorizes the Commission to take adverse inferences in five-year reviews, but such authorization does not relieve the Commission of its obligation to consider the record evidence as a whole in making its determination. We generally give credence to the facts supplied by the participating parties and certified by them as true, but base our decision on the evidence as a whole, and do not automatically accept the participating parties’ suggested interpretation of the record evidence. Regardless of the level of participation and the interpretations urged by participating parties, the Commission is obligated to consider all evidence relating to each of the statutory factors and may not draw adverse inferences that render such analysis superfluous. “In general, the Commission makes determinations by weighing all of the available evidence regarding a multiplicity of factors relating to the domestic industry as a whole and by drawing reasonable inferences from the evidence it finds most persuasive.”⁴¹

In evaluating the likely volume of imports of subject merchandise if the orders under review are revoked, the Commission is directed to consider whether the likely volume of subject imports would be significant either in absolute terms or relative to production or consumption in the United States.^{42 43} In doing so, the Commission must consider “all relevant economic factors,” including four enumerated factors: (1) any likely increase in production capacity or existing unused

³⁷ (...continued)

and lead times for delivery of goods, as well as other factors that may only manifest themselves in the longer term, such as planned investment and the shifting of production facilities.” *Id.*

³⁸ In analyzing what constitutes a reasonably foreseeable time, Chairman Koplan examines all the current and likely conditions of competition in the relevant industry. He defines “reasonably foreseeable time” as the length of time it is likely to take for the market to adjust to a revocation. In making this assessment, he considers all factors that may accelerate or delay the market adjustment process including any lags in response by foreign producers, importers, consumers, domestic producers, or others due to: lead times; methods of contracting; the need to establish channels of distribution; product differentiation; and any other factors that may only manifest themselves in the longer term. In other words, this analysis seeks to define “reasonably foreseeable time” by reference to current and likely conditions of competition, but also seeks to avoid unwarranted speculation that may occur in predicting events into the more distant future.

³⁹ 19 U.S.C. § 1675a(a)(1).

⁴⁰ 19 U.S.C. § 1675a(a)(1). The statute further provides that the presence or absence of any factor that the Commission is required to consider shall not necessarily give decisive guidance with respect to the Commission’s determination. 19 U.S.C. § 1675a(a)(5). While the Commission must consider all factors, no one factor is necessarily dispositive. SAA at 886.

⁴¹ SAA at 869.

⁴² 19 U.S.C. § 1675a(a)(2).

⁴³ Section 752(a)(1)(D) of the Act directs the Commission to take into account in five-year reviews involving antidumping proceedings “the findings of the administrative authority regarding duty absorption.” 19 U.S.C. § 1675a(a)(1)(D). Commerce has not issued any duty absorption determinations in the instant reviews.

production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.⁴⁴

In evaluating the likely price effects of subject imports if the orders are revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with domestic like products and whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the price of domestic like products.⁴⁵

In evaluating the likely impact of imports of subject merchandise if the order is revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.⁴⁶ All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.^{47 48} As instructed by the statute, we have considered the extent to which any improvement in the state of the domestic industries is related to the antidumping and countervailing duty orders at issue and whether the industries are vulnerable to material injury if the orders are revoked.⁴⁹

IV. REVOCATION OF THE ANTIDUMPING AND COUNTERVAILING DUTY ORDERS ON PURE MAGNESIUM FROM CANADA IS LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME⁵⁰

⁴⁴ 19 U.S.C. § 1675(a)(2)(A)-(D).

⁴⁵ 19 U.S.C. § 1675a(a)(3). The SAA states that “[c]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices.” SAA at 886.

⁴⁶ 19 U.S.C. § 1675a(a)(4).

⁴⁷ 64 Fed. Reg. 39390 (antidumping duty order) and 39392 (countervailing duty orders) (Aug. 31, 1992).

⁴⁸ Commissioner Askey does not join the preceding footnote concerning the nature of the likely subsidies in these reviews. For her analysis of the likely countervailing duty rates found by Commerce in this proceeding, *see* her Dissenting Views.

⁴⁹ The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, the Commission “considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.” SAA at 885.

⁵⁰ Commissioner Askey dissenting with respect to revocation of the countervailing duty order on pure

(continued...)

A. Conditions of Competition

In evaluating the likely impact of the subject imports on the domestic industry if an order is revoked, the statute directs the Commission to consider all relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁵¹

Now, as during the original investigation, pure magnesium is sold mainly to aluminum producers, to magnesium granule producers for steel desulfurization, and to chemical and pharmaceutical manufacturers.⁵² Demand for pure magnesium is dictated largely by the demand in these end-use markets. In particular, demand for pure magnesium largely depends on the demand for aluminum sheet used in the production of beverage cans and other packaging.⁵³ In the original investigation, the Commission observed that, as demand in the consuming industries declined slightly from 1989 to 1991, so did demand for pure magnesium.⁵⁴ Apparent U.S. consumption of pure magnesium declined between the original investigation and this review, and continued to decline from 1998 to 1999.⁵⁵ Most producers and purchasers predicted little change in the demand for pure magnesium in the next few years.⁵⁶

The production processes for alloy magnesium and pure magnesium are very similar and are typically performed at common manufacturing facilities using the same employees and basic equipment.⁵⁷ From a production standpoint, a domestic or foreign producer can easily switch between production of pure magnesium and alloy magnesium.^{58 59}

⁵⁰ (...continued)

magnesium. She joins in the following discussion to the extent it concerns revocation of the antidumping duty order on pure magnesium. For her analysis with respect to the likelihood that revocation of the countervailing duty order on pure magnesium would lead to continuation or recurrence of material injury within a reasonably foreseeable time, *see* her Dissenting Views.

⁵¹ 19 U.S.C. § 1675a(a)(4).

⁵² CR at II-1, PR at I-1.

⁵³ CR at II-7, PR at II-4.

⁵⁴ Original Remand Determination at 6.

⁵⁵ CR and PR at Table I-1. As measured by apparent U.S. consumption, demand declined from *** metric tons in 1991 to *** metric tons in 1998, and then by an additional *** percent, to *** metric tons in 1999. CR and PR at Table I-1 and Table C-1.

⁵⁶ CR at II-7-8, PR at II-4-5.

⁵⁷ CR at I-16 & n.12, PR at I-9 & n.12.

⁵⁸ CR at I-16, III-1-2, PR at I-9, III-1; Transcript of Hearing, May 31, 2000 (“Tr.”) at 53-54, 62, 107, 138. Therefore, we have considered not only reported capacity for pure and alloy individually, but also total primary magnesium capacity. We note, however, that an increase in the production of alloy magnesium will lower the aggregate production capacity due to its longer processing time. *See, e.g.*, CR at III-1, n.1.

⁵⁹ When examining capacity utilization rates in this proceeding, Commissioner Askey relied primarily on the combined pure and alloy magnesium capacity utilization rates for the domestic and subject producers. Because pure and alloy magnesium are produced on the same production lines, a producer’s ability to increase its production of either pure or alloy magnesium is directly constrained by its production of the other product. The record of this review indicates that the domestic and subject producers are currently operating at very high capacity utilization rates. Accordingly, relying on the individual capacity utilization rates set forth in the staff report for
(continued...)

As in the original investigation, imports of pure magnesium and the domestic like product continue to be close substitutes.⁶⁰ Nearly all responding purchasers of pure magnesium require their suppliers to become certified or prequalified and most buy pure magnesium exclusively from qualified suppliers.⁶¹ The qualification process takes from 1 to 6 months.⁶² These certification requirements limit the differences between subject imports and the domestic product. In fact, most purchasers reported few differences between U.S.-produced and subject Canadian pure magnesium, and all purchasers rated both products comparable in terms of technical support, reliability of supply, product range, product shape and size, product consistency, packaging, and delivery terms.⁶³

The market for pure magnesium continues to be price competitive.⁶⁴ Nearly all responding pure magnesium purchasers reported that their purchasing patterns have not changed significantly since 1992 and that they do not expect these patterns to change in the next two years.⁶⁵ They reported a variety of purchasing practices, ranging from weekly to annual purchases.⁶⁶ Before making a purchase, most pure magnesium purchasers contact between two and five suppliers.⁶⁷ *** sell the vast majority of their magnesium on a contract basis.⁶⁸ However, Magcorp currently ***.⁶⁹ ***.⁷⁰ NHCI reported ***.⁷¹

Although some U.S. market conditions discussed above have not changed significantly since the original investigation, there have been some significant changes in the domestic industry. Most notably, Dow Chemical Company (“Dow”), the largest domestic producer of pure magnesium during the original investigation, exited the market in November 1998.⁷² As a result of Dow’s exit, the industry has been further consolidated and now consists of only two producers. One, Northwest Alloys, internally transfers approximately *** percent of its pure magnesium production to its corporate parent, Alcoa, Inc., an aluminum manufacturer.⁷³ With Northwest Alloy’s internal transfers and Magcorp’s internal consumption of approximately *** percent of its

⁵⁹ (...continued)

either pure and alloy magnesium would fail to take into account the fact that a producer’s available capacity to produce either product is constrained by its total overall production of both products.

⁶⁰ See Original Remand Determination at 6.

⁶¹ CR at II-13, PR at II-7. Factors considered by pure magnesium producers in their qualification process include quality, price, reliability, delivery, size and shape of the ingot, and commitment to the market. *Id.*

⁶² CR at II-13, PR at II-7.

⁶³ CR and PR at Figure II-1.

⁶⁴ See CR at II-9-10 and V-3, PR at II-6 and V-2.

⁶⁵ CR at II-9, PR at II-6.

⁶⁶ CR at II-9, PR at II-6.

⁶⁷ CR at II-9-10, PR at II-6.

⁶⁸ CR at V-3, PR at V-2.

⁶⁹ CR at V-3, PR at V-2.

⁷⁰ CR at V-3, PR at V-2.

⁷¹ CR at V-4, PR at V-3.

⁷² CR at I-19, PR at I-11.

⁷³ CR at I-20, II-1-2, PR at I-11, II-1.

production, the domestic industry internally transferred approximately *** percent of its 1998 pure magnesium production and *** percent of its 1999 production.^{74 75 76}

Another significant change since the original investigation is the presence of generally low-priced nonsubject imports from third countries. Since the period of the original investigation and the imposition of the antidumping and countervailing duty orders on pure magnesium from Canada, there has been an increase in the imports of pure magnesium from third countries.⁷⁷ Nonsubject imports of pure magnesium are subject to the same qualification requirements as U.S.- and Canadian-produced pure magnesium, and are in a general sense substitutable for the latter. However, both U.S. and Canadian producers agree that factors such as price, quality, availability of scrap recycling programs, and the desire to have a North American supplier may limit the extent to which nonsubject imports are substitutable for U.S. or Canadian products.⁷⁸

A final new development in the U.S. market for pure magnesium is the imminent entry of a large new subject supplier, Magnola Metallurgy (“Magnola”), a Canadian producer owned by Noranda and GOQ, which is scheduled to begin production this year and to ship commercial shipments shortly thereafter.⁷⁹ At full capacity for combined pure and alloy magnesium production, Magnola will be able to produce 63,000 metric tons, making it the largest North

⁷⁴ CR at II-1, PR at II-1. The captive production provision of the statute, 19 U.S.C. § 1677(7)(c)(iv), does not apply to five-year reviews, but we consider the significant degree of captive production as a condition of competition. *See, e.g., Industrial Phosphoric Acid from Israel and Belgium*, Invs. Nos. 701-TA-286 (Review), 731-TA-365 (Review) USITC Pub. 3302 (May 2000) at 8, n.43.

⁷⁵ Chairman Koplan, Vice Chairman Okun, and Commissioner Hillman do not reach the issue of whether the captive production provision of the statute, 19 U.S.C. § 1677(7)(C)(iv), applies to five-year reviews, because even if it does, it would clearly not apply in this case. The evidence in the record of these reviews indicates that the second criterion of the test, (whether “the domestic like product is the predominant input in the production of [the] downstream article” that is produced captively), is not met. *See* CR at II-9, PR at II-6 (cost share for pure magnesium used in aluminum products is approximately 1 percent). *See also* Prehearing Brief of Noranda Aluminum at 5 (“The primary input in the downstream article manufactured with internally transferred pure magnesium is aluminum alloy, not the pure magnesium.”).

⁷⁶ Commissioner Askey notes that the Commission has recognized on previous occasions that the subject imports do not compete with captive production of domestic merchandise in the same way that they compete with domestic production sold in the merchant market. While the subject imports may arguably have some indirect effect on captive domestic production as a result of competition in downstream markets, any competitive price or volume effects between the subject imports and captive domestic consumption is attenuated, at best.

⁷⁷ *See* CR and PR at Table I-1. Since 1995, there have been antidumping duty orders on imports of pure magnesium from China and Russia. However, the order on imports from Russia excluded the major Russian producers and exporters of pure magnesium.

⁷⁸ *See* CR at II-17, PR at II-9.

⁷⁹ Commission staff obtained data about Magnola from its Worldwide Web site, through a staff telephone conversation with ***, and through a subsequent letter and comments from Magnola recharacterizing the information provided in the staff telephone conversation. *See* CR at IV-6-7 & nn.3, 4; PR at IV-4 & nn.3, 4.

American magnesium producer.⁸⁰ While Magnola stated that it currently ***,⁸¹ it has actively begun to solicit potential customers in the United States for sales of pure magnesium.⁸²

We find that the foregoing conditions of competition are likely to prevail for the reasonably foreseeable future and thus provide an adequate basis by which to assess the likely effects of revocation within the reasonably foreseeable future.

B. Likely Volume of Subject Imports

In the original investigation, the Commission found that the volume of dumped and subsidized imports, measured by both quantity and value, was significant, and increased substantially during the period of investigation.⁸³ The Commission further found that market penetration of subject imports of pure magnesium, by both quantity and value, increased dramatically during the period of the investigation.⁸⁴ Since the period of the original investigation, the volume and market share of subject imports of pure magnesium from Canada have been well below the levels they attained during the latter part of the original investigation.⁸⁵ We find that this low volume can be attributed to the effect of the antidumping and countervailing duty orders. However, the volume of subject imports, while remaining relatively low, *** from *** metric tons in 1998 to *** metric tons in 1999.⁸⁶

We find that subject Canadian producers have the capability to increase significantly shipments of subject pure magnesium to the United States within the reasonably foreseeable future. Magnola is positioned to enter the U.S. market commercially within the next year with a large quantity of pure magnesium. As noted, Magnola will have the capacity to produce 63,000 metric tons of magnesium by the end of 2001, more than any other Canadian or U.S. producer currently can produce.⁸⁷ Using Magnola's own estimates, it intends to produce *** metric tons of pure magnesium in 2001 and *** metric tons of pure magnesium in 2002.⁸⁸ We find that the additional available capacity attributable to Magnola by itself indicates that Canadian producers have the capability to increase significantly their shipments of pure magnesium to the United States.

⁸⁰ CR at IV-6-7; PR at IV-4. *See also* <http://www.noranda.com>; <http://www.magnola.com>.

⁸¹ CR at IV-7, n.4; PR at IV-4, n.4.

⁸² *See, e.g.*, Purchasers' Questionnaire Responses of ***, Tr. at 35.

⁸³ Original Remand Determination at 15. From 1989 to 1990, the quantity of subject pure magnesium imports increased from *** metric tons to *** metric tons. Original Confidential Report at I-96-99 (Table 38). In 1991, these subject imports increased another *** percent, to *** metric tons. *See id.* and CR and PR at Table I-1.

⁸⁴ Original Remand Determination at 15. From 1989 to 1990, subject import market share increased from *** percent to *** percent. *See* CR and PR at Table I-1.

⁸⁵ CR and PR at Figure I-1.

⁸⁶ CR and PR at Table I-1. Subject import market share went from *** percent market share in 1998 to *** percent in 1999. *Id.*

⁸⁷ *See* CR and PR at Table IV-3; CR at III-1-2, PR at III-1.

⁸⁸ *See* CR at IV-6-7 & n.4, PR at IV-4, n.4. *See also* Tr. at 27.

While NHCI is currently operating at effectively full capacity,⁸⁹ it has publicly announced its intention to double its capacity in two stages, with construction of the first additional *** metric tons originally scheduled to begin in 1998.⁹⁰ Although NHCI has not yet broken ground on this project, this substantial new capacity could be added within 18 months to two years,⁹¹ a prospect that we find would be likely if the orders were revoked. In addition, only *** percent of NHCI's current capacity is committed pursuant to pure magnesium contracts for 2000 and beyond, which leaves considerable capacity available to produce additional pure magnesium destined for the U.S. market.^{92 93}

We further find it likely that significant volumes of Magnola's production, as well as any increased capacity by NHCI,⁹⁴ will be targeted at the U.S. pure magnesium market. While the demand for pure magnesium is essentially flat, it is likely that Magnola and NHCI will produce and sell significant quantities of pure magnesium, because there continues to be a significant amount of demand for pure magnesium.⁹⁵ Canadian home market demand is low, at less than *** percent of NHCI's current primary magnesium capacity alone.⁹⁶ In addition, this small demand is partly met by magnesium imports into Canada from third countries.⁹⁷ As evidenced by NHCI's marketing efforts prior to the imposition of the antidumping and countervailing duty orders, the United States is the logical market for Canada's pure magnesium output, given the size and proximate location of the U.S. market and the fact that the demand in other major export markets is largely met by

⁸⁹ Although NHCI is currently operating at effectively full capacity, we note that increasing *** amounts of its production are being carried in inventory. See discussion *infra*, regarding increased NHCI inventory levels both absolutely and as a share of U.S. consumption.

⁹⁰ See Magcorp's Prehearing Brief at Exhibit 33.

⁹¹ Tr. at 108, 170-71.

⁹² CR at V-4, PR at V-3. NHCI also has *** which account for a substantial portion of current capacity. See CR at V-5, PR at V-3. However, as stated above, NHCI has publicly announced plans to increase capacity when market conditions are favorable; revocation would improve market conditions for exports.

⁹³ Commissioner Askey did not rely on NHCI's planned capacity addition to support her affirmative determination with respect to the antidumping duty order covering pure magnesium. She notes that the statute specifies that the Commission is to examine whether revocation of an order will be likely to lead to continuation or recurrence of material injury "within a reasonably foreseeable time." In the case of NHCI's expansion plans, the record indicates that NHCI has not yet broken ground on the project and that it will take at least eighteen months to two years to complete the project. Moreover, NHCI has stated that it does not anticipate that these facilities will be operational before the end of 2001. Further, NHCI is currently operating at *** high combined capacity utilization rate. CR and PR at Table IV-3, n.1. In light of this, Commissioner Askey believes that it is highly unlikely that NHCI could use its existing available capacity to increase its exports in more than a minimal fashion to the United States within a reasonably foreseeable time upon revocation of the order.

⁹⁴ For the reasons described above, Commissioner Askey did not rely on NHCI's planned capacity increase in her analysis.

⁹⁵ See CR at II-7, nn. 10, 11, & 12, PR at II-4, nn. 10, 11 & 12; Tr. at 95, 185-86. In 1999, pure magnesium accounted for *** percent of total magnesium demand. See CR and PR at Tables C-1 and C-3. Even as the share accounted for by pure magnesium declines as the demand for alloy magnesium grows, pure magnesium will continue to account for a significant portion of magnesium demand in the reasonable foreseeable future. See CR at II-7-8, PR at II-4, CR and PR at Tables C-1, C-2 and C-3.

⁹⁶ See CR and PR at Table IV-3.

⁹⁷ See Magcorp's Prehearing Brief at Exhibit 37.

nonsubject imports.⁹⁸ Most importantly, Magnola has indicated that it expects to sell approximately *** metric tons of pure magnesium to purchasers in the United States in 2001.⁹⁹ This would be equivalent to approximately *** percent of apparent U.S. consumption in 1999.¹⁰⁰

NHCI's inventories in Canada of pure magnesium *** from 1998 to 1999, to a level equal to *** percent of NHCI's pure magnesium production and *** percent of subject Canadian exports of pure magnesium to the United States for the period.¹⁰¹ In fact, NHCI's current inventory levels would be equivalent to *** percent of U.S. consumption of pure magnesium in 1999.¹⁰² These *** inventories further indicate NHCI's ability to increase its exports to the United States, separate and apart from the impact of substantial increases in capacity, within a reasonably foreseeable time upon revocation of the order.¹⁰³

In addition, from a production perspective, Canadian producers have substantial flexibility to switch production between pure magnesium and alloy magnesium.¹⁰⁴ Thus, NHCI and Magnola could redirect or shift production from alloy magnesium to pure magnesium simply by not adding alloying elements to the pure magnesium prior to casting the material into ingot form.^{105 106}

The significant market share increase that NHCI was able to attain quite quickly prior to the imposition of the antidumping and countervailing duty orders on pure magnesium, the substantial additional capacity expected to be added by Magnola and NHCI, their ability to shift production from alloy magnesium to pure magnesium, and their ability to significantly increase

⁹⁸ See Tr. at 44, 152, 187-88.

⁹⁹ CR at IV-6-7, PR at IV-4.

¹⁰⁰ See CR and PR at Table I-4.

¹⁰¹ CR and PR at Table IV-3.

¹⁰² See CR and PR at Table I-4 (1999 apparent U.S. consumption was *** metric tons) and Table IV-3 (NHCI end of 1999 inventories were *** metric tons).

¹⁰³ Commissioner Askey did not rely on NHCI's inventory levels to support her affirmative finding. NHCI's inventory levels are approximately *** metric tons lower than the domestic industry's current inventory levels. Compare CR and PR at Table III-4 with CR and PR at Table IV-3. Moreover, she notes that NHCI will only be able to sell merchandise out of its current inventory on a one-time basis and that NHCI's inventory levels are not so significant that a one-time sale from inventory would have a significant lasting impact on the industry. Further, she believes that NHCI would be unlikely to draw down all of its inventory to ship merchandise to the United States upon revocation of the order. Given this, she does not find that NHCI's current inventory levels suggest NHCI is likely to ship significant additional volumes of merchandise to the United States upon revocation of the order.

¹⁰⁴ CR at I-15-16, PR at I-9; See, e.g., Tr. at 53-53, 62, 114.

¹⁰⁵ See CR at I-16, PR at I-9; Tr. at 53-54, 62, 184-85.

¹⁰⁶ Commissioner Askey does not join the analysis in this paragraph. While she agrees that the subject producers have substantial flexibility to switch between pure and alloy magnesium production, she notes that NHCI, the only subject producer now producing pure magnesium, is operating at very high capacity utilization rates in its pure and alloy magnesium facilities. Given this, she finds that NHCI is unlikely to shift significant amounts of its alloy magnesium production from its existing customer base simply because of revocation of the order on pure magnesium, especially considering the significant likely increases in demand for alloy magnesium. In the case of Magnola, she notes that it is unlikely that Magnola would shift significant amounts of their projected alloy production to the production of pure magnesium upon revocation of the order, given that demand for alloy magnesium is projected to increase significantly within the reasonably foreseeable future and that producers appear able to earn strong operating returns on alloy magnesium in the United States.

exports to the U.S. market given its size and proximate location, indicate that NHCI and Magnola are likely to export significant volumes of pure magnesium to the United States within the reasonably foreseeable future if the orders are revoked.¹⁰⁷ Consequently, based on the record in these reviews, we conclude that the volume of subject imports would likely increase to a significant level and would regain significant U.S. market share if the orders are revoked.^{108 109}

C. Likely Price Effects of Subject Imports

In the original investigation, the Commission found that, at the same time that volume and market share of subject imports increased massively, prices for both U.S.- and Canadian-produced commodity-grade pure magnesium steadily declined.¹¹⁰ The Commission further noted the significance of the high degree of substitutability between U.S. and Canadian pure magnesium, a condition of competition that continues to apply. During the original investigation, as during this review, most purchasers of pure magnesium found few, if any, differences between the U.S. and Canadian products. Prior to the imposition of the antidumping and countervailing duty orders, the U.S. and Canadian products sold at similar prices, with price changes by one firm often followed by equivalent changes by other producers. The high substitutability and historic price alignment between U.S. and Canadian pure magnesium indicates that now, as during the original investigation, any effect of subject import prices on U.S. prices would likely be significant.^{111 112}

¹⁰⁷ Commissioner Askey does not join this statement. As she discussed above, Commissioner Askey finds that it is unlikely that NHCI will ship more than minimal additional volumes to the United States upon revocation of the order. However, she believes that the record evidence suggests that, in the absence of the antidumping order, Magnola will ship significant additional volumes of pure magnesium to the United States market upon revocation of the antidumping order and that these volumes will have a significant impact on domestic production and shipments in a market where demand is projected to remain flat.

¹⁰⁸ In the original final investigations, respondent Quebec argued that the Commission should not "cross cumulate" dumped and subsidized imports, but should instead render separate determinations regarding the effects of dumped and subsidized imports. The Commission rejected that argument, with explanation, in its original determinations. USITC Pub. 2550 at 16-17, note 60. That issue was not challenged before the U.S.-Canada Panel, and was not raised in these reviews.

In these reviews respondents, however, urge the Commission not to assume that subject merchandise manufactured by Magnola has or will benefit from countervailable subsidies. GOQ's Posthearing Brief at 5-8; Tr. at 145-47. As noted *supra*, Commerce, and not the Commission, is assigned the function of determining whether subsidies are likely to continue or recur (*see* 19 U.S.C. § 1675a(b)(3)). Here, Commerce determined an "all others rate" that will be applied to any Canadian exporter except NHCI (which was assigned a company-specific rate) and Timminco (which Commerce expressly excluded from the scope of the order). Final Results of Full Sunset Reviews: Pure Magnesium and Alloy Magnesium from Canada, 65 Fed. Reg. 41444 July 5, 2000). *See* Tr. at 141. Thus, Commerce implicitly found that any new shipper, including Magnola, will benefit from the subsidy.

¹⁰⁹ For Commissioner's Askey's views concerning the countervailing duty order, see her Dissenting Views.

¹¹⁰ Original Remand Determination at 17. The Commission found that quarterly price comparisons were not particularly useful to determine whether any underselling was significant, in light of the frequency of price changes, the high degree of substitutability, and the tendency of all producers to match price reductions, including through the use of "meet or release" clauses. *Id.* at n.90. Likewise, we do not find the limited quarterly price comparisons obtained during this review to be particularly probative of current or likely future price effects.

¹¹¹ Respondents argue that the degree of captive consumption is high enough to shield the industry from any
(continued...)

Absent the discipline of the orders, there is a substantial likelihood that Magnola would offer its product at low prices in order to obtain new customers. Magcorp and Northwest ***, and Magnola has already made sale approaches to U.S. purchasers, including essentially all of Magcorp's current customers.¹¹³ Magnola's entry will likely put pressure on NHCI to lower prices in the U.S. market. In order for NHCI or Magnola to take customers away from each other or from U.S. producers, they will likely reduce their prices below those of their competitors,¹¹⁴ in turn forcing U.S. producers and nonsubject producers or importers to reduce their prices in order to maintain their customers.¹¹⁵ We therefore find that, without the discipline of the antidumping and countervailing duty orders, NHCI and Magnola will likely decrease prices in order to gain market share in a market in which demand is projected to remain flat, likely recreating the type of price depression evidenced during the original investigation.

The likelihood of price depression in this market is highlighted by the information on the record regarding the first quarter of 2000, showing a trend towards contracts of no more than one year in duration that ***, and a shift from ***.¹¹⁶ Even without the increased pressure that would prevail were the orders revoked, these contract trends have already resulted in ***.¹¹⁷

For the foregoing reasons, we find that revocation of the antidumping and countervailing duty orders on pure magnesium from Canada would be likely to lead to significant underselling by the subject imports of the domestic like product, as well as significant price depression and suppression, within a reasonably foreseeable time.

¹¹¹ (...continued)

adverse effects from the subject imports. GOQ's Prehearing Brief at 4. We note that, a significant percentage--approximately ***--of domestic production of pure magnesium is sold in the merchant market. CR and PR at Table III-2. Moreover, we note that evidence in the record of these reviews suggests that Northwest's captive consumption of pure magnesium does not necessarily shield it from the effects of the subject imports. See CR at II-2, PR at II-1. The transfer price for shipments from Northwest to Alcoa is a ***, and has been based on ***. CR at II-2, III-26, PR at II-1, III-8.

¹¹² Commissioner Askey concluded that the price effects of subject imports are likely to be significant in significant part due to the fact that demand for pure magnesium is projected to be flat in the reasonably foreseeable future.

¹¹³ Tr. at 27- 28, 35. See also Purchasers' Questionnaire Responses of ***; Magcorp's Prehearing Brief at Exhibit 30. The record evidence indicates that Magnola's marketing team consists of a number of former Dow employees, who are experienced in selling magnesium in the United States and have purchaser contacts throughout the country. Tr. at 38.

¹¹⁴ *** NHCI's pure magnesium contracts contain ***. CR at V-3-4, PR at V-3; NHCI's Posthearing Brief at Attachment 1, pp. 1-2. ***. *Id.*

¹¹⁵ Although subject imports from Canada would also compete to some degree with nonsubject imports, the extent of such competition would likely be constrained somewhat by the limitations on the substitutability between U.S. or Canadian product on one hand and imports from third countries on the other. See CR at II-15, PR at II-9. To the extent the Canadian producers were competing with third country producers for customers, the increased imports from Canada would likely force down prices of the nonsubject imports, which in turn would reinforce the price depression cycle.

¹¹⁶ See CR at V-3-4, PR at V-5. *** Magcorp's pure magnesium contracts contain ***. See Magcorp's Posthearing Brief at 2 and Magcorp's Producers' Questionnaire Response at 29-A.

¹¹⁷ CR and PR at Table V-1.

D. Likely Impact

In the original investigation, the Commission found that the substantial increases in NHCI's share of a slightly declining market resulted in increased domestic inventories and placed significant pressure on the domestic producers to lower their prices.¹¹⁸ Noting that the U.S. plants producing pure magnesium are dedicated to primary magnesium production, with little flexibility to produce other products, the Commission further found that industry-wide price declines caused a direct reduction in revenues, as reflected in the financial data collected in the investigations. The Commission determined that the rapid increase in Canadian market share and concurrent decrease in prices of subject imports significantly depressed domestic prices, and led to a decline in domestic producers' U.S. shipments, causing an even sharper decline in revenues. In turn, the decline in revenue contributed directly to a rapid decline in profitability for the domestic industry.

It is difficult to assess the effect of the antidumping and countervailing duty orders on the domestic industry's performance, in light of the lack of post-order data for Dow's operations. However, a comparison of the financial data for Magcorp during the period of the original investigation with Magcorp's data collected in this review indicates some improvement in Magcorp's financial condition since the original investigation.¹¹⁹ However, Magcorp's financial performance, as well as that for the industry as a whole, *** somewhat from 1998 to 1999.¹²⁰

The industry's *** operating performance during much of the review period does not support a finding that the industry is vulnerable at the present time.¹²¹ However, the condition of the domestic industry reveals several important signs of ***. As noted, many of the industry's financial indicia *** from 1998 to 1999, and, as reflected in Magcorp's first fiscal quarter 2000 data, the ***.^{122 123}

¹¹⁸ Original Remand Determination at 19.

¹¹⁹ Compare Original Confidential Report at Table 22 with CR and PR at Table III-8.

¹²⁰ See CR and PR at Tables III-6 and III-8.

¹²¹ Commissioners Miller and Hillman find that the domestic industry is vulnerable. The condition of the industry *** between 1998 and 1999 with regard to several indicia, including profitability, employment and inventories. Magcorp's first quarter financial data for 2000 reflect a continuing ***. Given Magcorp's ***, Commissioners Miller and Hillman find it is appropriate to consider not only operating income but also net income, which *** from 1998 to 1999 and into the first quarter of 2000. Prices are declining; due particularly to the substitutable nature of the product; additional imports are likely to further depress prices. Finally, Dow's exit from the industry, while triggered by a natural disaster, was at least in part due to weak market conditions. See CR and PR at Tables III-4 through III-9; Tr. at 32-34, 75-76, 195-97, 222; Magcorp's Prehearing Brief at Attachments 12, 25, 26, 27; Staff Notes of telephone conversation with ***, June 9, 2000. The data in these reviews reflecting prices and the financial condition of domestic industry indicate that these weak conditions have continued.

¹²² Magcorp's Producers' Questionnaire Response at 18; Magcorp's Prehearing Brief at Exhibit 12.

¹²³ Commissioner Askey notes that the industry's financial results remain very strong, with operating income remaining at high levels in 1998 and 1999. In fact, the industry's operating income levels were *** percent in 1998 and *** percent in 1999. CR and PR at Table I-1. The industry retains more than two-thirds of the market and its condition will only be strengthened by the departure of Dow from the industry in 1998. Given this, Commissioner Askey does not find industry to be in a vulnerable or weakened state currently. However, with the
(continued...)

We find that the imminent entry of a major new supplier (Magnola) and likely increased capacity of an existing supplier (NHCI)¹²⁴ are likely to push the domestic industry into a further decline and prevent the industry from improving its financial condition. Magcorp has undertaken cost reductions and invested in new cell technology in anticipation of increasing its production capacity and improving its financial performance.¹²⁵ However, given Magcorp's ***, the loss of sales volume and price depression that are likely to result if the antidumping and countervailing duty orders are revoked would likely prevent Magcorp from implementing its new electrolytic cell technology, which would increase its efficiency and capacity.

As discussed above, revocation of the antidumping duty orders would likely lead to significant increases in the volume of subject imports at prices that would undersell the domestic like product and significantly depress U.S. prices. With demand for pure magnesium essentially stagnant in a price-sensitive market, the increase in subject imports is likely to cause decreases in both the prices and volume of domestic producers' shipments. These declines in turn would translate into lost revenues for the domestic industry, making it more difficult for Magcorp to finance its planned improvements and continue to meet its large interest expenses.

Thus, the price and volume declines would likely have a significant adverse impact on the production, shipment, sales, and revenue levels of the domestic industry. The reduction in the industry's production, sales, and revenue levels would have a direct adverse impact on the industry's profitability as well as its ability to raise capital and make and maintain necessary capital investments. In addition, we find it likely that revocation of the orders will result in commensurate employment declines for the industry.

Accordingly, we conclude that, if the antidumping and countervailing duty orders are revoked,¹²⁶ subject imports of pure magnesium from Canada would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

V. REVOCATION OF THE COUNTERVAILING DUTY ORDER ON ALLOY MAGNESIUM FROM CANADA IS LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME¹²⁷

A. Conditions of Competition

¹²³ (...continued)

likely entrance of a significant new subject Canadian competitor into a relatively price-sensitive market and the flatness of projected demand in the market, the industry's current healthy financial results are likely to be materially and adversely impacted by revocation of the antidumping duty order covering pure magnesium from Canada.

¹²⁴ For the reasons described above, Commissioner Askey did not rely on NHCI's planned capacity increase in her analysis.

¹²⁵ CR at III-28 & n. 19, PR at III-8; Tr. at 16-18. Replacement of just one half of its existing electrolytic cells would enable Magcorp to increase its capacity by 33 percent. Tr. at 18.

¹²⁶ Commissioner Askey dissenting with respect to the countervailing duty order covering pure magnesium.

¹²⁷ Commissioner Askey dissenting. See her Dissenting Views.

Alloy magnesium is sold primarily to diecasters for structural applications.¹²⁸ The alloy magnesium market has expanded rapidly and is projected to continue growing as new diecast applications are developed for the automotive and computer markets.¹²⁹ Between the original investigation and this review, U.S. apparent consumption of alloy magnesium grew from *** metric tons in 1991 to *** metric tons in 1998. Consumption rose to *** metric tons in 1999.¹³⁰ Demand is projected to grow by *** percent annually over the next few years.¹³¹

The production processes for alloy magnesium and pure magnesium are very similar and are typically performed at common manufacturing facilities using the same employees and basic equipment.¹³² A domestic or foreign producer can easily switch between production of pure magnesium and alloy magnesium.¹³³

In the original determination, the Commission noted that the subject imports of alloy magnesium were close substitutes for, and were very price competitive with, their U.S.-produced counterparts.¹³⁴ That has not changed. All responding alloy magnesium purchasers require their suppliers to be certified or prequalified.¹³⁵ The qualification process may take from one month to just over a year.¹³⁶ These certification requirements limit the differences between subject imports and the domestic product. In fact, most purchasers reported few differences between U.S.-produced and subject Canadian alloy magnesium, and all purchasers rated both products comparable in terms of reliability of supply, product range, product shape and size, product consistency, minimum quantity requirements, packaging, and delivery terms.¹³⁷

The market for alloy magnesium continues to be price competitive.¹³⁸ Most responding alloy magnesium purchasers reported that their purchasing patterns have not changed significantly since 1992.¹³⁹ Alloy magnesium purchasers reported a variety of purchasing practices, ranging from weekly to annual purchases.¹⁴⁰ Before making a purchase, most alloy magnesium purchasers

¹²⁸ CR at II-1, PR at II-1.

¹²⁹ CR at II-1, PR at II-1.

¹³⁰ CR and PR at Table I-1.

¹³¹ CR at II-7-8, nn. 10, 11, 14, PR at II-4-5, nn. 10, 11, 14.

¹³² CR at I-16 & n.12, PR at I-9 & n.12.

¹³³ CR at I-16, III-1-2, PR at I-9, III-1; Tr. at 53-54, 62, 107, 138. Therefore, we have considered not only reported capacity for pure and alloy individually, but also total primary magnesium capacity. We note, however, that an increase in the production of alloy magnesium will lower the aggregate production capacity due to its longer processing time. *See, e.g.*, CR at III-1, n.1, PR at III-1, n.1.

¹³⁴ Original Remand Determination at 11.

¹³⁵ CR at II-13, PR at II-8. Factors considered by alloy magnesium purchasers in their qualification process include quality, price, reliability, delivery, packaging, and recycling support. *Id.*

¹³⁶ CR at II-13, PR at II-8.

¹³⁷ CR and PR at Figure II-2.

¹³⁸ *See* CR at II-9-10 and V-3, PR at II-6 and V-2.

¹³⁹ CR at II-10, PR at II-6.

¹⁴⁰ CR at II-10, PR at II-6.

contact between one and eight suppliers.¹⁴¹ Most change suppliers only infrequently.¹⁴² However, *** and *** indicated that they expect these patterns to change in the next two years, in *** case, as it seeks out additional suppliers who are more price competitive, and, in *** case, as it develops other suppliers to meet additional demand.¹⁴³

Contracts play an even more important role in the alloy magnesium industry than they do in the pure magnesium industry. Magcorp's ***.¹⁴⁴ NHCI currently has ***.¹⁴⁵ NHCI's largest contract,***, and its ***.¹⁴⁶

Now, as during the original investigation, nonsubject imports maintain a sizable presence in the U.S. alloy magnesium market.¹⁴⁷ Unlike pure magnesium, there are no outstanding antidumping duty orders on imports of alloy magnesium from countries other than Canada. Nonsubject imports of alloy magnesium are subject to the same qualification requirements as U.S.- and Canadian-produced alloy magnesium, although some third party producers have failed qualification for certain purchasers.¹⁴⁸ Both U.S. and Canadian producers agree that factors such as price, quality, availability of scrap recycling programs, and the desire to have a North American supplier may limit the full extent to which nonsubject imports are substitutable for U.S. or Canadian products.¹⁴⁹

Although the U.S. market conditions discussed above have not changed significantly since the original investigation, there have been some other significant changes in the domestic industry. As with pure magnesium, Dow, the largest domestic producer of alloy magnesium during the original investigation, exited the market in November 1998.¹⁵⁰ As a result of Dow's exit, the industry has been further consolidated, and now consists only of two producers, one of which, *** , ***.¹⁵¹

As with pure magnesium, a final new development in the U.S. market for alloy magnesium is the imminent entry of Magnola. At full capacity for combined pure and alloy magnesium production, Magnola will be able to produce 63,000 metric tons, making it the largest North

¹⁴¹ CR at II-10, PR at II-6.

¹⁴² CR at II-10, PR at II-6.

¹⁴³ CR at II-10, PR at II-6.

¹⁴⁴ CR at V-3, PR at V-2.

¹⁴⁵ CR at V-5, PR at V-3. The ***. *Id.*

¹⁴⁶ CR at V-5, PR at V-2; NHCI's Posthearing Brief at Attachment 1, pp. 1-2.

¹⁴⁷ CR and PR at Table I-2.

¹⁴⁸ CR at II-13, n.30, PR at II-8, n.30.

¹⁴⁹ See CR at II-17, PR at II-9.

¹⁵⁰ CR at I-19, PR at I-11.

¹⁵¹ In 1999, Northwest Alloys produced ***. CR at III-4, PR at III-2. Northwest ***. CR at III-3, n.3, PR at III-2, n.3.

American producer.¹⁵² While Magnola stated that it currently ***,¹⁵³ it has actively begun to solicit potential customers in the United States for sales of alloy magnesium.¹⁵⁴

We find that the foregoing conditions of competition are likely to prevail for the reasonably foreseeable future and thus provide an adequate basis by which to assess the likely effects of revocation within the reasonably foreseeable future.

B. Likely Volume of Subject Imports

In the original investigation, the Commission found that the volume of subsidized imports of alloy magnesium was significant and increased manyfold during the period of investigation.¹⁵⁵ The Commission also found that the market penetration of subject imports increased dramatically during the period of investigation.¹⁵⁶ Even with the order in place, NHCI has shipped a significant and increasing volume of subject alloy magnesium into the U.S. market since the original investigation, capturing an increasing market share; it now holds *** of the U.S. market share for alloy magnesium.¹⁵⁷

As with pure magnesium, we find that Canadian producers have the capability to increase significantly shipments of subject alloy magnesium to the United States within the reasonably foreseeable future. Magnola is positioned to enter the U.S. market commercially within the next year or two with a large quantity of alloy magnesium. As noted, Magnola will have the capacity to produce 63,000 metric tons of magnesium, more than any other Canadian or U.S. producer currently can produce. Using Magnola's revised estimates, it intends to produce *** metric tons of alloy magnesium in 2001 and *** metric tons of alloy magnesium in 2002.¹⁵⁸ The capacity that will be introduced by Magnola will significantly outpace the growth in demand that is projected for the reasonably foreseeable future. We find that the additional available capacity attributable to Magnola by itself indicates that Canadian producers have the capability to increase significantly their shipments of alloy magnesium into the United States.

While NHCI is currently operating at effectively full capacity,¹⁵⁹ it has publicly announced its intention to double its capacity in two stages, with construction of the first additional *** metric tons to begin in 1998.¹⁶⁰ Although NHCI has not yet broken ground on this project, this

¹⁵² CR at IV-6-7, PR at IV-4.

¹⁵³ CR at IV-7, n.4, PR at IV-4, n.4.

¹⁵⁴ See, e.g., Purchasers' Questionnaire Responses of ***; Tr. at 35.

¹⁵⁵ Original Remand Determination at 22. Imports of NHCI's alloy magnesium increased from *** in 1989 to to *** metric tons in 1991. See CR and PR at Table I-2.

¹⁵⁶ Original Remand Determination at 22. Imports of subject alloy magnesium accounted for *** share of domestic consumption in 1989, but captured approximately *** of the market in 1991. See CR and PR at Table I-2.

¹⁵⁷ See CR and PR at Figure I-2 and Table I-2.

¹⁵⁸ See CR at IV-6-7 & n.4, PR at IV-4 & n.4.

¹⁵⁹ Although NHCI is currently operating at effectively full capacity, we note that *** amounts of its production are being carried in inventory. See CR and PR at Table IV-3.

¹⁶⁰ See Magcorp's Prehearing Brief at Exhibit 33.

substantial new capacity could be added within 18 months to two years,¹⁶¹ a prospect that we find would be likely if the orders were revoked. While approximately *** of NHCI's current magnesium production capacity is *** and other contracts account for additional commitments, NHCI's expanded capacity will increase its ability to capture U.S. clients in the alloy market, where NHCI has chosen to focus its U.S. sales.¹⁶²

We further find it likely that significant volumes of Magnola's production, as well as any increased capacity by NHCI, will be targeted at the growing U.S. alloy magnesium market. NHCI has already shown its proclivity to focus its sales on the U.S. alloy magnesium market, and is likely to be as or more active in this effort if the countervailing duty order is lifted. In addition, as with pure magnesium, the United States is the logical market for Canada's alloy magnesium output, given the size and proximate location of the U.S. market and the fact that the demand in other major export markets is largely met by nonsubject imports.¹⁶³ Although Canadian home market demand grew from 1998 to 1999, that demand remains low in relation to Canadian producers' capacity, production and shipments to the United States.¹⁶⁴ Magnola has indicated that it expects to sell approximately *** metric tons of alloy magnesium to purchasers in the United States in 2001.¹⁶⁵ This would account for *** percent of U.S. consumption even with expected growth in demand.

NHCI maintained *** inventories in Canada of alloy magnesium throughout the review period.¹⁶⁶ In 1999, NHCI's inventories were at levels equal to *** percent of Canadian alloy magnesium exports to the United States. These *** inventories further indicate NHCI's ability to increase its exports to the United States, separate and apart from the impact of substantial increases in capacity, within a reasonably foreseeable time upon revocation of the order.

In addition, from a production perspective, Canadian producers have substantial flexibility to switch production between pure magnesium and alloy magnesium.¹⁶⁷ Thus, if the countervailing duty order on alloy magnesium was revoked while the orders on pure magnesium were retained, NHCI and Magnola could redirect or shift additional production from pure magnesium to alloy magnesium.

The already significant market presence of subject imports from Canada, the stated focus by NHCI and Magnola on the alloy magnesium market, the substantial additional capacity expected to be added by Magnola and NHCI, their ability to shift production from pure magnesium to alloy magnesium, and their ability to significantly increase exports to the U.S. market given its size and proximate location, indicate that subject Canadian producers are likely to export significant additional volumes of alloy magnesium from Canada to the United States within the reasonably foreseeable future if the countervailing duty order on alloy magnesium is revoked.

¹⁶¹ Tr. at 108, 170-71.

¹⁶² *See, e.g.*, Tr. at 124.

¹⁶³ *See* Tr. at 44, 152, 187-88.

¹⁶⁴ *See* CR and PR at Table IV-3.

¹⁶⁵ CR at IV-6-7, PR at IV-4.

¹⁶⁶ CR and PR at Table IV-3.

¹⁶⁷ CR at I-16, PR at I-9; *See, e.g.*, Tr. at 53-53, 62, 114.

Consequently, based on the record in this review, we conclude that the volume and market share of subject imports would likely increase significantly from their already high levels.¹⁶⁸

C. Likely Price Effects of Subject Imports

In the original investigation, the Commission found that, at the same time that volume and market share of subject imports increased, prices for both U.S.- and Canadian-produced alloy magnesium steadily declined.¹⁶⁹ The Commission noted that Canadian and U.S. producers' prices for contract sales of alloy magnesium declined as did the unit value of alloy magnesium from Canada. The Commission further noted the high degree of substitutability between U.S. and Canadian alloy magnesium, a condition of competition that continues to apply now. Prior to the imposition of the antidumping and countervailing duty orders, the U.S. and Canadian products sold at similar prices, with price changes by one firm often followed by equivalent changes by other producers. Accordingly, the Commission found that the effect of subject import prices on U.S. prices was significant.

We find it likely that the increased volumes of imports of alloy magnesium from Canada that would enter the United States if the order were revoked would have significant adverse price effects for the U.S. product. Prices for alloy magnesium have recently been declining.¹⁷⁰ Absent the discipline of the orders, there is a substantial likelihood that Magnola would offer its product at low prices in order to obtain new customers. Indeed, Magnola has already made sale approaches to U.S. purchasers, including essentially all of Magcorp's current customers.¹⁷¹ Further, the likelihood that Magnola will offer low prices to obtain customers is increased by the stated intentions of some purchasers to seek out new suppliers.¹⁷²

Given the highly competitive nature of the alloy magnesium market and the need to establish contractual relationships, Magnola's entry will likely put pressure on NHCI to lower its prices further in the U.S. market. In order for NHCI or Magnola to take customers away from each other or from Magcorp, they will likely reduce their prices below those of their competitors, in turn forcing Magcorp and nonsubject producers and importers to reduce already declining prices in order to maintain customers.¹⁷³ We find that, without the discipline of the countervailing duty

¹⁶⁸ As we stated in our discussion of the likely effects of revocation of the countervailing duty order on pure magnesium, we decline to look behind Commerce's countervailing duty findings concerning alloy magnesium.

¹⁶⁹ Original Remand Determination at 25.

¹⁷⁰ See CR and PR at Tables I-2 and V-2.

¹⁷¹ Tr. at 27- 28, 35. See also Purchasers' Questionnaire Responses of ***; Magcorp's Prehearing Brief at Exhibit 30. The record evidence indicates that Magnola's marketing team consists of a number of former Dow employees, who are experienced in selling magnesium in the United States and have purchaser contacts throughout the country. Tr. at 38.

¹⁷² CR at II-10 & n.21, PR at II-6 & n.21.

¹⁷³ Although subject imports from Canada would undoubtedly compete with nonsubject imports, the extent of such competition would likely be constrained by the limitations on the substitutability between U.S. or Canadian product on one hand and imports from third countries on the other. See CR at II-17, PR at II-9. To the extent the Canadian producers were competing with third country producers for customers, the increased imports from Canada would likely force down prices of the nonsubject imports, which in turn would reinforce the price

(continued...)

order, NHCI and Magnola will likely decrease prices in order to gain market share, likely recreating the type of price depression evidenced during the original investigation.¹⁷⁴

The likelihood of price depression in this market is accentuated by the prevalence of *** in alloy magnesium contracts. *** provisions, which are included in Magcorp's *** and ***¹⁷⁵ In addition, NHCI's ***.¹⁷⁶ Thus, Magnola's likely efforts to enter the U.S. market by offering low prices would likely result not only in NHCI and Magcorp having to lower prices to their customers to meet competitors' prices, but would also force them to ***. In light of the existing pricing practices, even a seemingly small change in price would likely have a *** effect on prices for *** of NHCI's, and consequently, Magcorp's alloy magnesium sales.

For the foregoing reasons, we find that revocation of the countervailing duty order on alloy magnesium from Canada would be likely to lead to significant underselling by the subject imports of the domestic like product, as well as significant price depression and suppression, within a reasonably foreseeable time.

D. Likely Impact

In the original investigation, the Commission found that the substantial increases in NHCI's share of a stable market resulted in increased domestic inventories and placed significant pressure on the domestic producers to lower their prices.¹⁷⁷ Noting that the U.S. plants producing alloy magnesium are dedicated to primary magnesium production, with little flexibility to produce products other than magnesium, the Commission further found that industry-wide price declines caused a direct reduction in revenues, as reflected in the financial data collected in the investigations.

It is difficult to assess the effect of the countervailing duty order on the domestic industry's performance, in light of the lack of post-order data for Dow's operations. However, a comparison of the financial data for Magcorp during the period of the original investigation with Magcorp's data collected in this review indicates some improvement in Magcorp's financial condition since the original investigation, although Magcorp's alloy magnesium operations continue to show ***.¹⁷⁸ Magcorp's financial condition, which essentially represents the entire current industry, *** from 1998 to 1999, notwithstanding ***.¹⁷⁹

¹⁷³ (...continued)
depression cycle.

¹⁷⁴ In the original investigation, the Commission noted that the alloy magnesium price comparisons were mixed and irregular, but showed a significant decline for both U.S. and Canadian producers. Original Remand Determination at 24, n.114. In light of the frequency of price changes from one sale to the next, the Commission found that the price comparisons were not particularly useful for evaluating whether there was underselling. Likewise, in this review, we do not find the price comparisons useful for addressing underselling, but have given weight to the downward trends that the data show for both U.S. and Canadian product.

¹⁷⁵ CR at V-3-5, PR at V-2-3.

¹⁷⁶ CR at V-5, PR at V-3; NHCI's Posthearing Brief at Attachment 1, pp. 1-2.

¹⁷⁷ Original Remand Determination at 26.

¹⁷⁸ Compare Original Confidential Report at Table 28 with CR and PR at Table III-12.

¹⁷⁹ See CR and PR at Tables III-10 and III-12.

The industry's operating performance during the review period does not support a finding that the industry is vulnerable at the present time.¹⁸⁰ However, the condition of the domestic industry reveals several important signs of weakness. Notwithstanding *** since the original investigation and from 1998 to 1999, the industry's operating income fell slightly. As reflected in Magcorp's first fiscal quarter 2000 data, the financial indicia ***.¹⁸¹

We find that the imminent entry of a major new supplier (Magnola) and likely increased capacity of an existing supplier (NHCI) are likely to push the domestic industry further into a decline and prevent the industry from turning its financial condition back around. Magcorp has undertaken cost reductions and invested in new cell technology in anticipation of increasing its production capacity and improving its financial performance.¹⁸² However, the loss of sales volume and price depression that are likely to result if the countervailing duty order is revoked would likely prevent Magcorp from implementing its new electrolytic cell technology, which would increase its efficiency and capacity.

As discussed above, revocation of the countervailing duty order would likely lead to a significant increase in the already high volume and market share of subject imports at prices that would undersell the domestic like product and significantly depress U.S. prices. These resulting losses in U.S. sales and further declines in already declining prices would translate into *** lost revenues for the domestic industry, making it more difficult for Magcorp to finance its planned improvements and continue to meet its large interest expense.

Thus, the price and volume declines would likely have a significant adverse impact on the production, shipment, sales, and revenue levels of the domestic industry. The reduction in the industry's production, sales, and revenue levels would have a direct adverse impact on the industry's profitability as well as its ability to raise capital and make and maintain necessary capital investments. In addition, we find it likely that revocation of the orders will result in commensurate employment declines for the industry.

Accordingly, we conclude that, if the countervailing duty order is revoked, subject imports of alloy magnesium from Canada would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

CONCLUSION

¹⁸⁰ Commissioners Miller and Hillman finds that the domestic industry is vulnerable. The financial condition of the industry *** between 1998 and 1999. Magcorp's first quarter financial data for 2000 reflect ***. Given Magcorp's ***, Commissioners Miller and Hillman find it is appropriate to consider not only operating income but also net income, which *** from 1998 to 1999 and into the first quarter of 2000. Prices are declining; due particularly to the substitutable nature of the product, additional imports are likely to further depress prices. Finally, Dow's exit from the industry, while triggered by a natural disaster, was at least in part due to weak market conditions. *See* CR and PR at Tables III-4 through III-9; Tr. at 32-34, 75-76, 195-97, 222, Magcorp's Prehearing Brief at Attachments 12, 25, 26, 27; Staff Notes of telephone conversation with ***, June 9, 2000. The data in these reviews reflecting prices and the financial condition of domestic industry indicate that these weak conditions have continued.

¹⁸¹ Magcorp's Producers' Questionnaire Response at 20; Magcorp's Prehearing Brief at Exhibit 12.

¹⁸² CR at III-28 & n. 19, PR at III-8 & n.19; Tr. at 20-21. Replacement of just one half of its existing electrolytic cells would enable Magcorp to increase its capacity by 33 percent. Tr. at 21.

For the foregoing reasons, we determine that revocation of the antidumping and countervailing duty orders on imports of pure magnesium from Canada would be likely to lead to continuation or recurrence of material injury to the domestic pure magnesium industry within a reasonably foreseeable time. We also determine that revocation of the countervailing duty order on imports of alloy magnesium from Canada would be likely to lead to continuation or recurrence of material injury to the domestic alloy magnesium industry within a reasonably foreseeable time.

DISSENTING VIEWS OF COMMISSIONER THELMA J. ASKEY

Section 751(d) of the Tariff Act of 1930, as amended, requires the Department of Commerce to revoke an antidumping duty or countervailing duty order in a five-year (“sunset”) review unless Commerce determines that dumping or a countervailable subsidy would be likely to continue or recur and the Commission determines that material injury would be likely to continue or recur within a reasonably foreseeable time.¹⁸³

Based on the record in these five-year reviews, I concur with my colleagues with respect to their findings concerning the domestic like product and the domestic industry. I also concur with their determination that revocation of the antidumping duty order covering pure magnesium from Canada would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. Accordingly, I join the Commission’s opinion discussing these findings, to the extent noted.¹⁸⁴

However, unlike my colleagues, I determine that revocation of the countervailing duty orders covering pure magnesium and alloy magnesium from Canada would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. Accordingly, I write separately to explain my determinations with respect to these orders.

I. REVOCATION OF THE COUNTERVAILING DUTY ORDER COVERING PURE MAGNESIUM FROM CANADA IS NOT LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

As I stated above, I concur in the Commission majority’s finding that revocation of the antidumping duty order covering the subject imports of pure magnesium from Canada will be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. As discussed in the Commission opinion, I find that revocation of the antidumping duty order covering subject imports of pure magnesium from Canada is likely to result in a significant increase in subject import volumes, in significant adverse effects on domestic prices by reason of the subject imports, and in a significant adverse impact on the condition of the industry from the subject imports.

Nonetheless, I find that revocation of the countervailing duty order covering pure magnesium will not result in the continuation or recurrence of material injury to the industry. As I indicated in my footnotes in the Commission’s views on pure magnesium, the record clearly indicates that NHCI, the sole Canadian producer now producing commercial quantities of pure magnesium, is unable to ship more than minimal volumes of pure magnesium to the United States during the foreseeable future. In fact, although NHCI has been subject to minimal antidumping and countervailing duty deposit rates since the beginning of the period of review, the company has not shipped significant additional volumes of pure magnesium to the United States during the period of review.¹⁸⁵ In light of the foregoing, I find that revocation of the countervailing duty order is unlikely to result in significant additional imports of alloy merchandise from NHCI.

¹⁸³ 19 U.S.C. §§ 1675(d)(2), 1675a(a)(1) (1994).

¹⁸⁴ I also join their discussion of the legal standards governing our analysis in these reviews.

¹⁸⁵ CR and PR at Table I-1.

Moreover, NHCI is unlikely to significantly change its pricing practices upon revocation of the order. NHCI is currently subject to a relatively small countervailing duty rate of 2.02 percent.¹⁸⁶ Moreover, Commerce has found that NHCI is likely to be subsidized at a rate of 1.84 percent upon revocation of the pure magnesium order.¹⁸⁷ In addition, the price comparison data obtained in this review indicates that NHCI is currently *** domestically produced pure magnesium at rates that are, on average, *** than its current countervailing duty deposit rates.¹⁸⁸ Accordingly, I do not believe that revocation of the countervailing duty order, with its minimal cash deposit rates, will have any impact on NHCI's pricing practices in the United States.

I also find that revocation of the countervailing duty order on pure magnesium would not have a significant impact on Magnola's likely exportation or pricing patterns in the United States. Magnola will be subject to a somewhat small countervailing duty rate of 4.48 percent when it begins exporting pure magnesium to the United States.¹⁸⁹ However, Magnola will also be subject to a relatively high dumping deposit rate of 21 percent¹⁹⁰ on its U.S. shipments. Because the pure magnesium market is a relatively price-sensitive market in which demand is projected to remain flat for the foreseeable future, I believe that the relatively high antidumping deposits applicable to Magnola will restrain that company's ability to export significant volumes of pure magnesium to the United States and to price aggressively in the United States market. Thus, in light of the fact that I find that the antidumping order should remain in place, I believe that revocation of the countervailing duty order, with its small cash deposit rates, will have little or no impact on Magnola's export or pricing practices in the market.

Accordingly, I find that it is unlikely that revocation of the countervailing duty order covering pure magnesium from Canada would result in a continuation or recurrence of material to the domestic industry within the reasonably foreseeable future.

II. REVOCATION OF THE COUNTERVAILING DUTY ORDER COVERING IMPORTS OF ALLOY MAGNESIUM FROM CANADA IS NOT LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

I also determine that revocation of the countervailing duty order covering imports of alloy magnesium from Canada is not likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

¹⁸⁶ CR at I-10-11, PR at I-5-6. In this regard, I note that the statute directs me to consider information regarding the nature of the countervailable subsidy and whether the subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement. 19 U.S.C. §1675a(6). Commerce found that the only subsidy applicable to current exports of magnesium is not an Article 3.1 subsidy and that Article 6 of the Agreement has ceased to apply. Accordingly, I do not find that the nature of the subsidy is such that it will be likely to cause material injury upon revocation of the order.

¹⁸⁷ CR at I-10-11, PR at I-5-6. In this regard, I note that the statute directs me to consider information regarding the nature of the countervailable subsidy and whether the subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement. 19 U.S.C. §1675a(6). Commerce found that the only subsidy applicable to current exports of magnesium is not an Article 3.1 subsidy and that Article 6 of the Agreement has ceased to apply. Accordingly, I do not find that the nature of the subsidy is such that it will be likely to cause the subject producers to increase their exports significantly to the United States upon revocation of the order.

¹⁸⁸ CR and PR at Table V-1.

¹⁸⁹ CR at I-10-11, PR at I-5-6.

¹⁹⁰ CR at I-10-11, PR at I-5-6.

A. Conditions of Competition

In evaluating the likely impact of the subject imports on the domestic industry, the statute directs the Commission to consider all relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”¹⁹¹ The record of this review indicates that the market for alloy magnesium in the United States is characterized by the following conditions of competition:

Demand for alloy magnesium is derived from downstream demand for magnesium alloy products.¹⁹² Generally, these downstream products are used in diecasting applications, primarily in the automotive sector. Unlike demand for pure magnesium, which has been in some decline since the original investigations, demand for alloy magnesium has shown very significant growth since the original investigations, due in significant part to substantial growth in the use of alloy magnesium in automotive diecasting applications.¹⁹³ In fact, apparent U.S. consumption of alloy magnesium has grown more than four-fold since the original period of investigation, increasing from *** thousand metric tons in 1989 to *** thousand metric tons in 1998.¹⁹⁴ Demand for alloy magnesium has continued to increase significantly during the period of review, with consumption growing nearly *** percent from 1998 to 1999.¹⁹⁵

Nearly all market participants project that demand for alloy magnesium will continue to grow dramatically for the foreseeable future. Magcorp and Northwest, the two domestic producers of alloy magnesium, and the subject Canadian producer NHCI all report that demand for alloy magnesium is likely to grow significantly during the foreseeable future, largely because of continued growth in automotive diecasting applications.¹⁹⁶ The dominant domestic producer of alloy magnesium, Magcorp, projects annual growth of *** percent in the alloy market over the next several years while NHCI projects growth ranging between *** percent.¹⁹⁷ Responding purchasers also predict significant continued growth in the alloy magnesium market, with estimates of likely growth ranging between *** and *** percent.¹⁹⁸ For example, Ford projects that its purchases of alloy magnesium may *** during the next few years and that it may boost its annual use of magnesium to *** thousand tons by 2004 or 2005.¹⁹⁹

Like the pure magnesium industry, the domestic alloy magnesium industry was concentrated before the period of review and became more concentrated during the period of review. In January 1998, there were three domestic producers of alloy magnesium: Magcorp, Northwest and Dow.²⁰⁰ In November 1998, Dow Chemicals, the largest domestic producer, shut down its operations due to extensive damage from lightning strikes and floods.²⁰¹ As a result, there are only two remaining domestic producers of alloy

¹⁹¹ 19 U.S.C. § 1675a(a)(4).

¹⁹² CR at II-7, PR at II-4.

¹⁹³ CR at II-7, PR at II-4.

¹⁹⁴ CR and PR at Table I-2.

¹⁹⁵ CR and PR at Table I-2. Consumption increased from *** metric tons in 1998 to *** thousand metric tons in 1999. *Id.*

¹⁹⁶ CR at II-7-8, PR at II-4-5.

¹⁹⁷ CR at II-7, nn. 10 & 11, PR at II-4, nn. 10 & 11.

¹⁹⁸ CR at II-8, nn. 13-15, PR at II-4, nn. 13-15.

¹⁹⁹ CR at II-8, n. 15, PR at II-5, n.15.

²⁰⁰ CR at III-1-3, PR at III-1-2.

²⁰¹ CR at I-19, PR at I-1. Dow’s facility had a capacity of 65,000 metric tons, which compares with a capacity of *** thousand tons *** for Northwest and Magcorp. CR at III-1-2, PR at III-1.

magnesium, Magcorp and Northwest. Magcorp produces the vast bulk of domestic alloy magnesium, accounting for *** percent of domestic production of alloy magnesium in 1999.²⁰²

The domestic alloy magnesium producers are operating at high capacity utilization levels. The combined pure and alloy magnesium capacity for the two domestic producers' facilities was *** metric tons in 1998 and 1999, while their combined capacity utilization rate was *** percent in 1998 and *** percent in 1999.²⁰³ Because the industry's total current magnesium capacity is approximately *** metric tons, the industry appears to be unable to satisfy total U.S. demand for pure and alloy magnesium, which was approximately *** metric tons in 1999.²⁰⁴ Thus, the record suggests that the industry would have been unable to supply nearly *** metric tons of pure and alloy demand in 1999, even if it had operated at capacity utilization rates of 100 percent.

There is only one subject Canadian producer currently producing alloy magnesium in commercial quantities: NHCI.²⁰⁵ NHCI accounted for *** of Canadian production of alloy magnesium in 1999.²⁰⁶ NHCI's combined pure and alloy capacity was *** thousand metric tons in 1998 and 1999, which was equivalent to approximately *** percent of total domestic consumption of pure and alloy magnesium.²⁰⁷ However, NHCI operated at a combined capacity utilization rate of *** percent in 1998 and *** percent in 1999.²⁰⁸

The record indicates that another Canadian firm, Magnola, is in the midst of starting up production operations for pure and alloy magnesium.²⁰⁹ The company reports that it expects to reach its full projected production capacity of 63,000 metric tons of magnesium in 2002.²¹⁰ Magnola expects to sell only ***.²¹¹ However, the company anticipates that it will produce approximately *** metric tons of pure and alloy magnesium in 2001, with approximately *** tons being alloy magnesium.²¹² The company projects that it will ship *** tons of alloy magnesium to North American customers in 2001, with approximately *** metric tons being shipped to United States customers in 2001.²¹³

²⁰² CR at III-3, n. 3, PR at III-2, n.3. Northwest accounted for only *** percent of domestic production in 1999 and *** CR at I-20, III-3, n. 3, PR at I-11, III-2, n. 3.

²⁰³ Because pure and alloy magnesium are produced on the same production lines, the only appropriate measure of an individual producer's capacity utilization rate is its combined pure and alloy magnesium capacity utilization rate. However, I would note that the producers' combined capacity utilization rate is somewhat understated because it is based on the producers' stated pure magnesium capacity. CR and PR at Table III-1, n. 1. Alloy magnesium requires more production time than pure magnesium. Thus, any firm that produced alloy magnesium would have a lower effective capacity than its stated capacity for pure magnesium. CR and PR at III-1, n.1.

²⁰⁴ CR and PR at Tables I-1 and I-2.

²⁰⁵ As discussed above, the other Canadian producer that is currently operating is Timminco, but Timminco is not subject to the orders.

²⁰⁶ CR at IV-7, PR at IV-4.

²⁰⁷ Compare CR and PR at Tables IV-3, I-1 & I-2.

²⁰⁸ CR and PR at Table IV-3.

²⁰⁹ CR and PR at IV-6-7, PR at IV-1 & IV-4.

²¹⁰ CR at IV-6, PR at IV-1.

²¹¹ CR at IV-6, PR at IV-4.

²¹² CR at IV-6-7, PR at IV-4.

²¹³ CR at IV-6-7, PR at IV-4.

Purchasers of alloy magnesium report a variety of purchasing patterns, ranging from daily to monthly purchases.²¹⁴ Most purchasers reported that their purchasing patterns had not changed significantly since 1992. Several purchasers reported that they expect their purchasing patterns to change during the next two years, with most of these purchasers stating that they were interested in pursuing new suppliers of alloy product.²¹⁵ Before making a purchase, most purchasers contact between one and eight suppliers. Nonetheless, most purchasers reported that they change suppliers only infrequently, with most of those reporting a change citing the closure of Dow's plant as the reason for the change.²¹⁶ Both *** use annual or multi-year contracts for a significant portion of their sales.²¹⁷

While price is an important factor in the pure magnesium purchase decision, quality is the most important factor in the purchase decision, with four of seven responding purchasers rating it the most important factor in the purchase decision and three purchasers rating it the second most important factor.²¹⁸ In contrast, only one purchaser rated price as the most important factor in the purchase decision and only two rated it the second most important factor.²¹⁹

There is a relatively high degree of substitutability between domestic and subject imported alloy magnesium. The record evidence indicates that the Canadian imports are considered comparable to the domestic product in most respects, including quality.²²⁰ As with pure magnesium, the *** reported that U.S.-produced and imported subject Canadian magnesium are generally used interchangeably. Moreover, all four responding alloy magnesium purchasers reported that U.S.-produced and imported subject Canadian magnesium are used in the same applications.²²¹

Finally, nonsubject imports occupy a significant percentage of the alloy magnesium market. The market share of nonsubject imports of alloy magnesium was *** percent in 1998 and *** percent in 1999.²²² The *** report that domestic and subject imported Canadian magnesium are generally used interchangeably with nonsubject imported magnesium.²²³

I find that the foregoing conditions of competition are likely to prevail for the reasonably foreseeable future and thus provide a reasonable basis on which to assess the likely effects of revocation within the reasonably foreseeable future.

B. Likely Volume of the Subject Imports of Alloy Magnesium from Canada

In evaluating the likely volume of imports of subject merchandise if a countervailing duty order is revoked, the statute directs the Commission to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.²²⁴ In doing so, the Commission must consider "all relevant economic factors," including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country;

²¹⁴ CR at II-10, PR at II-6.

²¹⁵ CR at II-10, PR at II-6.

²¹⁶ CR at II-10, PR at II-6.

²¹⁷ CR at V-4, PR at V-2.

²¹⁸ CR and PR at Table II-2.

²¹⁹ CR and PR at Table II-2.

²²⁰ CR at II-13-15 & Figure II-2, PR at II-8-9 & Figure II-2.

²²¹ CR at II-14, PR at II-8.

²²² CR and PR at Table I-2.

²²³ See CR at II-15, PR at II-9.

²²⁴ 19 U.S.C. § 1675a(a)(2).

(2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.²²⁵

In its original investigation, the Commission found that the volume of subsidized imports of alloy magnesium was significant and increased substantially during the period of investigation.²²⁶ The Commission also found that the market penetration of subject imports increased dramatically during the period of investigation.²²⁷ Nonetheless, the record of this review indicates that the countervailing duty order has had little or no restraining effect on the volume of the subject imports. Even with the order in place, the subject Canadian producer NHCI has shipped substantial and increasing volumes of alloy magnesium to the United States, and has increased its market share significantly.²²⁸ At the end of 1999, the subject Canadian imports of alloy magnesium occupied the bulk of the market, with their market share standing at the *** percent level.²²⁹ This suggests that revocation of the countervailing duty order covering alloy magnesium will have little impact on the volume of the subject imports in the market.

I find that the volume of the subject imports of alloy magnesium from Canada is not likely to be significant if the order is revoked. First, NHCI, the only subject producer of alloy magnesium now producing alloy magnesium in commercial quantities, is unlikely to ship more than minimal additional volumes of alloy magnesium to the United States upon revocation of the order. NHCI is currently operating at very high capacity utilization rates, with its combined capacity utilization rate being *** percent in 1998 and *** percent in 1999.²³⁰ These high capacity utilization rates indicate that NHCI has little or no existing capacity that could be used to ship additional amounts of merchandise to the United States upon revocation of the order.²³¹

In addition, NHCI is currently subject to a minimal countervailing duty rate of 2.02 percent, and has been subject to relatively small countervailing duty rates during the period of review.²³² As I indicated

²²⁵ 19 U.S.C. § 1675a(a)(2)(A)-(D).

²²⁶ Original Remand Determination at 22, *citing* original confidential report at Table 38. Imports of NHCI's alloy magnesium increased from *** in 1989 to to *** metric tons in 1991. *See* CR and PR at Table I-2.

²²⁷ Original Remand Determination at 22, *citing* original confidential report at Table 42. Imports of subject alloy magnesium accounted for *** share of domestic consumption in 1989, but captured approximately *** of the market in 1991. *See* CR and PR at Table I-2.

²²⁸ CR and PR at Table I-2.

²²⁹ CR and PR at Table I-2.

²³⁰ CR and PR at Table IV-3.

²³¹ Although NHCI has announced that it intends to expand its overall magnesium capacity by as much as *** metric tons, I find that this capacity expansion is unlikely to occur within a reasonably foreseeable time. Although NHCI announced these plans in 1997, NHCI has not yet broken ground on the project. Moreover, the record indicates that it will take at least eighteen months to two years to complete the project. Tr. at 88, 140, & 171. In addition, NHCI has reported that it does not anticipate that these additional facilities will be on line by the end of 2001. Given this, I do not find that this capacity expansion is likely to occur within a reasonably foreseeable time. Moreover, even if it were to be completed within such a time frame, the impact of the capacity expansion would be significantly diluted by the dramatic expansion in demand in the United States market.

²³² NHCI was subject to countervailing duty rates of 3.18 and 2.78 percent during 1997 and 1998. CR at I-10-11, PR at I-6. In this regard, I note that the statute directs me to consider information regarding the nature of the countervailable subsidy and whether the subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement. 19 U.S.C. § 1675a(6). Commerce found that the only subsidy applicable to current exports of

(continued...)

above, these minimal countervailing duty rates have had little or no restraining effect on the volume of NHCI's imports of alloy magnesium. On the contrary, the volume of the subject imports increased more than six-fold since 1991, growing from *** metric tons in 1991 to *** metric tons in 1999.²³³ Subject market share has also increased dramatically since the imposition of the order, growing from *** percent of the market in 1991 to *** percent of the market in 1999.²³⁴ In light of the fact that these significant increases have occurred during a period of dramatic increases in demand and have had little apparent effect on the production, capacity utilization, shipments, sales, sales prices, and profitability levels of the two remaining members of the industry, I find that, even if revocation of the order resulted in some increase in NHCI's sales to the United States, that increase would not be likely to have a significant impact on the industry's sales or productions volumes.²³⁵

Secondly, I find that Magnola is unlikely to ship volumes of alloy magnesium to the United States that would have a significant impact on the domestic industry upon revocation of the order. Magnola is a new entrant in the North American magnesium marketplace and plans to ship *** additional amounts of merchandise to the United States within the reasonably foreseeable future.²³⁶ Magnola expects its pure and alloy production facilities to be on-line by the end of 2001 and plans to ship approximately *** metric tons of alloy magnesium product to the United States during 2001.²³⁷ These projected shipment levels are clearly not an insubstantial amount of merchandise in a market in which total apparent consumption was *** metric tons in 1999. Nonetheless, I find that, even if the company actually sends all of its projected alloy magnesium shipments to the United States in 2001, these shipments will be absorbed by the demand increases in demand that are expected occur in 2000, 2001 and beyond.²³⁸

All of the responding parties in this review agree that demand for alloy magnesium is expected to grow at an accelerated pace throughout the foreseeable future. Most market participants, including Magcorp and Northwest Alloys, project that annual demand will grow at rates between *** and *** percent per year during 2000, 2001 and 2002.²³⁹ If one conservatively assumes that total U.S. consumption of alloy magnesium will grow at a *** percent annual pace during 2000 and 2001, total U.S. consumption in 2001

²³² (...continued)

magnesium is not an Article 3.1 subsidy and that Article 6 of the Agreement has ceased to apply. Accordingly, I do not find that the nature of the subsidy is such that it will be likely to cause the subject producers to increase their imports to the United States significantly upon revocation of the order.

²³³ CR and PR at Table I-2.

²³⁴ CR and PR at Table I-2.

²³⁵ As a final note, I would add that the *** of NHCI's shipments are subject to *** contracts. CR at V-5, PR at V-2-3. *** of these contracts will expire in *** and cover *** percent of NHCI's current production. Moreover, nearly *** percent of their 1999 production of alloy merchandise is covered by contracts that will expire ***. The existence of these contracts indicates that NHCI has only a limited ability to ship additional merchandise to the United States.

²³⁶ CR at IV-6-7, PR at IV-4.

²³⁷ CR at IV-6-7, PR at IV-4.

²³⁸ I also note that Magnola's statements about its likely future production and shipment levels only represent what the company anticipates that it will ship to the United States in 2001. Magnola's expectations may not reflect its likely shipment levels in that year, given that there is no clear indication in the record that the company will actually have its expected capacity on-line by the end of 2001 or that it will be qualified to sell merchandise to U.S. customers by the end of 2001.

²³⁹ CR at II-7-8, nn. 10-15, PR at II-4-5, nn. 10-15.

can be expected to be *** higher than in 1999.²⁴⁰ Thus, Magnola's projected shipment volume of *** thousand tons in 2001 is likely to be absorbed completely by the expected growth in demand in the alloy magnesium market. In light of this, I find that Magnola's projected shipments of alloy product in 2001 are unlikely to have any volume effect on the domestic industry, given that the industry is currently operating at high capacity utilization rates and that it has no plans to expand capacity significantly in the foreseeable future.²⁴¹

Finally, I note that there are no reported trade barriers or antidumping duty orders against Canadian imports in other countries. In addition, although NHCI does have the ability to shift production between pure and alloy magnesium within its production facilities, it is currently operating at very high capacity utilization rates and is unlikely to shift significant volumes of production from its existing base of pure magnesium customers. In the case of Magnola, I note that the company is not currently producing commercial quantities of pure and alloy magnesium but has provided the Commission with its projected pure and alloy magnesium product mix for 2001.²⁴² I see little evidence in the record to suggest that Magnola would significantly change its projected production mix simply because of the revocation of a countervailing duty order that would otherwise subject Magnola to relatively small countervailing duty rates. Finally, I note that the current inventory levels of the subject producer are not significant enough to suggest that they could have more than a minimal impact in a market in which demand is expected to increase dramatically for the foreseeable future.²⁴³

Accordingly, I find that the volume of the subject imports of alloy magnesium from Canada is not likely to be significant upon revocation of the order.

C. Likely Price Effects of the Subject Imports from Canada

In evaluating the likely price effects of subject imports if the countervailing duty orders are revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with the domestic like product, and whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the prices of the domestic like product.²⁴⁴

In the original investigation, the Commission found that prices for both U.S.- and Canadian-produced alloy magnesium steadily declined at the same time that volume and market share of subject imports increased.²⁴⁵ The Commission noted that the prices of the domestic and Canadian producers' contract sales of alloy magnesium declined during the period of investigation as did the average unit values of alloy magnesium from Canada. The Commission also noted that there was a high degree of

²⁴⁰ See CR and PR at Table I-2.

²⁴¹ I would also note that any possible impact of Magnola's future imports on the industry will also be mitigated somewhat by the presence of substantial volumes of Canadian and other nonsubject imports in the market. Because there is a reasonable degree of substitutability between the subject and nonsubject merchandise, any possible imports from Magnola that are not absorbed by demand increases will come, in part, at the expense of the nonsubject imports.

²⁴² CR at IV-6-7, PR at IV-1, 4.

²⁴³ CR and PR at Table IV-3.

²⁴⁴ 19 U.S.C. § 1675a(a)(3). The SAA states that "[c]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices." SAA at 886.

²⁴⁵ Original Remand Determination at 25.

substitutability between U.S. and Canadian alloy magnesium. Prior to the imposition of the antidumping and countervailing duty orders, the U.S. and Canadian products sold at similar prices, with price changes by one firm often followed by equivalent changes by other producers. Accordingly, the Commission found that effect of subject import prices on U.S. prices was significant.

Nonetheless, I find that the subject imports of alloy magnesium from Canada are not likely to have significant adverse effects on domestic prices if the order is revoked. Although the record of this review indicates that there is a high degree of substitutability between the subject and domestic merchandise and that price is an important factor in the purchase decision, the record of this review also indicates that demand for alloy magnesium is expected to grow dramatically in the U.S. market for the foreseeable future and that these demand increases will outstrip likely domestic and subject supply for the foreseeable future. These demand increases are likely to result in significant increases in the prices paid for domestic and subject merchandise during the foreseeable future, even with the entrance of Magnola into the market.²⁴⁶ Accordingly, I find that it is highly unlikely that any additional merchandise imported by Magnola or NHCI upon revocation of the order would have any impact on domestic price movements during the foreseeable future.

I also note that the subject producers are currently subject to relatively small countervailing duty rates.²⁴⁷ Given that the subject producer NHCI has been able to obtain a majority of the domestic alloy market with the order in place, I believe that revocation of the order is unlikely to have any impact on the subject producers' pricing practices in the market. Moreover, although the subject producers occupy a substantial portion of the market currently and are subject to minimal CVD rates, the available price comparison data indicates that, during the period of review, the subject imports have been consistently *** the domestic merchandise at rates that are ***.²⁴⁸ In light of the consistent current levels of overselling in the face of minimal CVD rates, I find it unlikely that the subject Canadian producers will begin underselling the domestic merchandise significantly upon revocation of the order, or that they would significantly suppress or depress domestic prices in the foreseeable future.

Accordingly, given the significant increases in demand that are projected for the future, I find that it is unlikely that the subject imports of alloy magnesium will have a significant adverse impact on domestic prices upon revocation of the order.

D. Likely Impact of the Subject Imports from Canada

In evaluating the likely impact of imports of subject merchandise if the countervailing duty order is revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry,

²⁴⁶ In this regard, I note that the average unit values of the domestic, subject and nonsubject merchandise have generally increased by more than *** percent during the period since the original investigation, at a time when demand for alloy magnesium has increased significantly. CR and PR at Table I-2.

²⁴⁷ NHCI is subject to a current countervailing duty rate of 2.02 percent and Magnola will be subject to the all others rate of 4.48 percent. CR at I-10-11, PR at I-5-6. Moreover, Commerce found that NHCI will be likely to be subsidized at a rate of 1.84 percent upon revocation and that the all others rate would be 4.48 percent upon revocation.

²⁴⁸ CR and PR at Table V-2.

including efforts to develop a derivative or more advanced version of the domestic like product.²⁴⁹ All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.²⁵⁰

In the original investigation, the Commission found that the substantial increases in NHCI's share of a stable market resulted in increased domestic inventories and placed significant pressure on the domestic producers to lower their prices.²⁵¹ Noting that the U.S. plants producing alloy magnesium are dedicated to primary magnesium production and had little flexibility to produce products other than magnesium, the Commission further found that industry-wide price declines caused a direct reduction in revenues, as reflected in the financial data collected in the investigations.

As an initial matter, I find that the U.S. industry is not currently in a vulnerable state. Despite the continued substantial and increasing presence of subject imports in the market since the imposition of the order in 1992, the industry's condition is very strong. Although the industry's market share is significantly lower than during the original period of investigation,²⁵² the industry's operating income levels and capacity utilization rates remain very healthy.²⁵³ Moreover, the industry's condition is likely to strengthen considerably in the future with the departure of the domestic producer Dow from the marketplace.²⁵⁴ The consolidation of this already concentrated industry will help insulate the industry from significant injury by reason of the subject imports. Most importantly, I find that the record strongly suggests that the domestic industry will benefit significantly from the 10 to 15 percent annual increases in demand that are expected to occur in this market during the foreseeable future.

As I discussed above, the record of these reviews indicates that the subject imports of alloy magnesium from Canada are not likely to have significant adverse volume and price effects on the domestic industry within the reasonably foreseeable future if the order is revoked. Accordingly, I also find that the cumulated subject imports would not be likely to have a significant impact on the domestic industry's cash flow, inventories, employment, wages, growth, ability to raise capital, investment or development efforts within a reasonably foreseeable time if the order is revoked. Further, I find that revocation of the order would not be likely to lead to a significant reduction in U.S. producers' output, sales, market share, profits, productivity, ability to raise capital, or return on investments within a reasonably foreseeable time.

Accordingly, I find that revocation of the countervailing duty orders covering alloy magnesium from Canada is not likely to have a significant impact on the domestic industry. I therefore determine that revocation of the order covering these imports would not be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

²⁴⁹ 19 U.S.C. § 1675a(a)(4).

²⁵⁰ 19 U.S.C. § 1675a(a)(4).

²⁵¹ Original Remand Determination at 26.

²⁵² CR and PR at Table I-2. The industry's market share ranged between *** and *** percent during the original period of investigation, its market share was *** percent in 1998 and *** percent in 1999. *Id.* While these market shares are significantly lower than the original period, they appear to be due, in part, to the departure of Dow from the industry in 1999 (and Dow's failure to submit data in this investigation) and, in part, to the industry's decision to focus their production operations since the original investigation on production of pure magnesium.

²⁵³ The industry's operating income levels were *** percent in 1998 and *** percent in 1999. CR and PR at Table I-1. The industry's combined capacity utilization rates, while understated, were *** percent in 1998 and *** percent in 1999. CR and PR at Table III-1.

²⁵⁴ CR and PR at III-1.